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Supreme Court, U.S.
FILED
MAY 10 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-1469

ERNEST W. LOHF, as Trustee in Bankruptcy of SUDLER, HART & CO., doing business as Sudler & Co.,

Petitioner,

AGAINST

THE TRAVELERS INDEMNITY COMPANY, an insurance company organized under the laws of the State of Connecticut,

Respondent.

REPLY OF PETITIONER TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioner submits this Reply to Respondent's Brief in Opposition to Petition for Writ of Certiorari pursuant to Paragraph 4 of Rule 24 of this Court.[1]

ARGUMENT

Petitioner posed one singular question for review by this Court — whether the Court of Appeals' holding that,

[1] References and abbreviations used in this Reply are the same as those used in the Petition for Writ of Certiorari.

notwithstanding Respondent's absolute denial
tioner's claim, Petitioner was precluded from
under a Bond issued by Respondent *solely* b
proof of claim was furnished to the insuror wa
to applicable law. Respondent restated both the
Presented and a portion of the Statement of
apparently arguing that waiver of additional p
ditions is involved.

While the Court of Appeals states that
letter does not waive any Bond condition, it is
fact that no proof of claim was filed which led it
indemnity.[2] The Court of Appeals refers to no ot
condition as controlling its decision.[3] *In Home
of New York v. Taylor*[4] the Supreme Court of
decided the question presented by Petitioner
that, where no proof has been filed with the insu
absolutely refuses in any event to pay (*i.e.*,
denial), the insuror waives compliance with the
loss requirement. No authority cited by eithe
Courts below or by Respondent is to the contr

Quoting extensively from the District Court'
Respondent argues that the District Judge f
under Colorado law Respondent's letter denying
er's claim did not waive compliance with the
claim condition of the Bond. That Court did n
or conclude.[6] Indeed, the District Court, at mot

[2] Appendix B at B-2.

[3] The Court of Appeals appears to criticize Petitioner for
of claim eleven months after his appointment (Appendix
but does not rule that his claim was late. The District
citing *Federal Life Ins. Co. v. Wells*, 98 Colo. 455, 5
(1936), expressly held that it was "not dealing with
requirement." Appendix C at C-5. That Court noted th
of claim had been delivered (*id.*, at C-4) and was silen
effect of that fact.

[4] 94 Colo. 446, 32 P. 2d 183-184 (1934).

[5] Brief in Opposition at 5-6.

[6] See n.3, *supra*.

indicated that Respondent's defenses related to absence of timely notice and of proof of loss were without merit in the following colloquy:

> "MR. GREENGARD [Counsel for Respondent]: • • • Furthermore, there was no notice or proof of loss. But for the purposes of this argument, I will admit that the cases on waiver seem to state that notice and proof of loss requirements can be waived if you don't object to them.
>
> "THE COURT [Winner, D. J.]: I'm not very much impressed by any position that you take that you win this lawsuit because of failure to file proof of loss, in view of this letter. [Respondent's letter of December 16, 1970, denying Petitioner's claim.]
>
> "MR. GREENGARD: Yes, Your Honor, and that's why we are not arguing that.
>
> "THE COURT: I think we are pretty well excused from that."[7]

CONCLUSION

For the reasons set forth in the Petition for Writ of Certiorari and herein, the Petition should be granted.

Respectfully submitted,

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[7] Record, Vol. I at 11.